

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ROSA BOYLAND,

Plaintiff,

v.

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

Case No. 03-73334

Hon. Gerald E. Rosen

Magistrate Judge Wallace Capel, Jr.

**ORDER ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on September 30, 2005

PRESENT: Honorable Gerald E. Rosen
United States District Judge

On April 14, 2005, Magistrate Judge Wallace Capel, Jr. issued a Report and Recommendation ("R & R") recommending that the Court grant the Defendant Commissioner of Social Security's motion for remand. The stated basis for Defendant's motion is that the Office of Hearings and Appeals has been unable to prepare a transcript of Plaintiff's administrative hearing because the cassette tapes of this hearing cannot be located. Accordingly, Defendant requests, and the Magistrate Judge recommends, that the case be remanded pursuant to Sentence Six of § 205(g) of the Social Security Act, 42 U.S.C. § 405(g), to allow a continued search for the missing tapes. Neither party has filed

objections to the R & R.

Having reviewed the R & R, Defendant's motion, Plaintiff's response, and the record as a whole, and being otherwise fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED that the Magistrate Judge's April 14, 2005 Report and Recommendation is ADOPTED as the ruling of this Court. IT IS FURTHER ORDERED that Defendant's motion for remand is GRANTED, with Defendant given *ninety (90) days* from the date of this Order to locate the audiotapes of Plaintiff's administrative hearing. If these audiotapes and the remainder of the administrative record cannot be located within this time, the Defendant Commissioner is instructed to remand this matter to the Social Security Administration to conduct a *de novo* hearing on Plaintiff's claim for benefits.¹

s/Gerald E. Rosen

Gerald E. Rosen

United States District Judge

Dated: September 30, 2005

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 30, 2005, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager

¹The Court wishes to express its frustration and deep concern that administrative materials could be lost in this fashion, and that the Defendant Commissioner — not for the first time — should be unable to properly maintain the complete records needed to ensure claimants' statutory right to judicial review. The Court hopes and expects that all efforts will be made to locate the administrative materials in this case, and that these efforts will prove successful.